

drivers, or conveyances that affects the basis for continued participation in the LBCIP.

§ 123.73 Application to participate.

To request participation in the LBCIP, the carrier-applicant must submit an application containing the information requested in this section. The application must be accompanied by two copies of a LBCIP written agreement (see § 123.72 of this part; upon request, the local port director will provide copies of an unsigned written agreement) containing original signatures of corporate officers or owners of the common carrier. The application shall be prepared by the common carrier, be signed by corporate officers or owners, and submitted to the port director. If a submitted application does not provide all of the information specified in this section, the processing of the application will either be delayed or the application will be rejected. The application shall include the following information:

(a) *General business identification and site condition information.* The name and address of the commercial conveyance entity, the names of all principals or corporate officers, the name and telephone number of an individual to be contacted for further information, and a complete and detailed description of the premises where business operations are conducted, to include all working/storage areas and security features employed;

(b) *Designated driver information.* A listing of the drivers designated by the carrier who will be transporting merchandise into the U.S. The listing shall set forth the name(s), address(es), date of birth, nationality, driver's license number, and any other personal identifying information regarding the drivers listed, *e.g.*, social security number (if available), to enable Customs to conduct background checks and to aid Customs officers at the border crossing point in identifying individual LBCIP-authorized drivers;

(c) *Conveyance identification information.* A listing of the conveyances, *e.g.*, trucks and locomotives, that the carrier will utilize to transport merchandise into the U.S. The listing shall set forth the type and make of convey-

ances, country of registration and license number(s), conveyance-specific identifying markings, *e.g.*, vehicle identification numbers (VINs), and any other general conveyance identifying information, *e.g.*, weight, color, recognizable modifications, etc., to aid Customs officers at the border crossing point in identifying particular LBCIP-registered conveyances; and

(d) *Affidavit of business character.* A statement signed by the carrier-applicant which attests to each principal's or corporate officer's past and present business relations, *e.g.*, a list of past companies worked for and positions held, which fully explains the presence of any past or present crime involving theft or smuggling or investigations into such crimes, or other dishonest conduct on the part of a principal.

§ 123.74 Notice of selection; appeal of determination.

The information provided pursuant to paragraphs (b) through (d) of § 123.73 shall constitute the criteria used to evaluate the competency of the carrier-applicant to participate in the LBCIP. Following Customs evaluation of the information provided, Customs shall notify the carrier-applicant in writing of Customs determination as to whether the carrier-applicant is qualified to participate in the LBCIP. In cases of selection, Customs will sign and return one of the copies of the written agreement. In cases of non-selection, the written notice shall clearly state the reason(s) for denial and recite the applicant's appeal rights under paragraph (b) of this section.

(a) *Grounds for nonselection.* The port director may deny a carrier's application to participate in the LBCIP for any of the following reasons:

(1) Evidence of any criminal or dishonest conduct involving the carrier, a corporate officer, designated drivers, or other person the port director determines is exercising substantial ownership or control over the carrier operation or corporate officer;

(2) Evidence of improper use of designated conveyances;

(3) Evidence that the written agreement was entered into by fraud or misstatement of a material fact; or

(4) A determination is made that the grant of LBCIP privileges would endanger the revenue or security of the Customs area.

(b) *Appeal of determination.* Carrier-applicants not selected to participate in the LBCIP and who wish to appeal the decision shall either:

(1) Appeal the adverse determination in accordance with the appeal procedure set forth in §123.75(c) of this part; or

(2) Cure any deficiency in the first application by submitting a new application to the port director who denied the previous application after waiting 60 days from the date of issuance of the first determination.

§ 123.75 Notice of revocation; appeal of decision.

(a) *Revocation.* The port director may immediately revoke a carrier's participation in the LBCIP and cancel the written agreement for any of the following applicable reasons:

(1) The selection and written agreement were obtained through fraud or the misstatement of a material fact by the carrier;

(2) The carrier, a corporate officer, or other person the port director determines is exercising substantial ownership or control over the carrier operation or corporate officer, is indicted for, convicted of, or has committed acts which would constitute any felony or misdemeanor under United States Federal or State law. In the absence of an indictment, conviction, or other legal process, the port director must have probable cause to believe the proscribed acts occurred;

(3) The carrier-participant allows an unauthorized person or entity to use its LBCIP certificate or other approved form of identification;

(4) The carrier-participant misuses authorized conveyances;

(5) The carrier-participant refuses or otherwise fails to follow any proper order of a Customs officer or any Customs order, rule, or regulation;

(6) The carrier-participant fails to operate in accordance with the terms of the written agreement; or

(7) Continuation of LBCIP privileges would endanger the revenue or security

of the Customs area in the judgment of the port director.

(b) *Notice.* When a decision revoking participation has been made, the port director shall notify the carrier-participant of the decision in writing. The notice of revocation shall clearly state the reason(s) for revocation and recite the applicant's appeal rights under paragraph (c) of this section.

(c) *Appeal of decision.* Carrier-participants that receive a notice of revocation and who wish to appeal the decision shall file a written appeal with the Assistant Commissioner, Office of Field Operations, U.S. Customs Service, Washington, DC 20229, within 10 calendar days of receipt of the notice. The appeal shall be filed in duplicate and shall set forth the carrier's responses to the grounds specified by the port director in the notice. Within 30 working days of receipt of the appeal, the Assistant Commissioner, or his designee, shall make a determination regarding the appeal and notify the applicant in writing.

§ 123.76 Authorization by Customs for participants to use certain drivers.

(a) *Responsibilities of LBCIP participants.* An LBCIP participant is required, pursuant to §123.73 of this part, to list the drivers designated to transport merchandise into the United States for the carrier to enable Customs to conduct background checks. An LBCIP participant is also required, pursuant to §123.72 of this part, to conduct, to the extent allowed by law, employment and criminal history checks on all personnel designated to participate in the LBCIP; these personnel include drivers.

(b) *Authorization of drivers by Customs.* Customs may not approve a carrier for participation in the LBCIP if it determines that there is evidence that a driver designated by a carrier has been involved in criminal or dishonest conduct or it may request that the carrier not use that driver before approving the carrier for participation. Once a carrier has been accepted in the LBCIP, Customs may determine to cancel a particular driver's authorization to transport merchandise for a LBCIP carrier for the reasons set forth in paragraph (c) of this section.